IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 137 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

REKHABEN YOGENDRAKUMAR MANIAR

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 137 of 2003
MR MUKESH A PATEL for Petitioner No. 1-2
MR I.M.PANDYA, APP for Respondent No. 1
..... for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 01/03/2004

ORAL JUDGEMENT

Heard learned advocate appearing for the petitioner. Other side, though served, is not present. It is submitted by learned advocate Mr. Mukesh A Patel appearing for the petitioner that on earlier occasion the respondent No.2 Husband Yogendra Kumar Maniar, when appeared, had expressed his wish to place written submissions on the record of the Court and he does not want to engage any advocate. A written reply prepared by the respondent No.2 husband was to be tendered with the registry and copy of which was also to be supplied to the office of Public Prosecutor. I am told that a copy in the office of Public Prosecutor was tendered as State of Gujarat is also a party. Mr. I.M.Pandya, learned APP confirms that the copy of the contentions raised by the respondent No.1 was submitted in the office of Public Prosecutor and the office is having copy of the same. Whether the original was ever tendered to the registry or not, is not a question, because the same is not available on record of this file. Learned APP Mr. Pandya, while assisting the Court, has, tendered written reply received by the office of Public Prosecutor, for perusal and the contentions have been considered by this Court today.

2. Learned advocate Mr. Mukesh A. Patel appearing for the petitioners has submitted that the learned Sessions Judge while reducing the amount of maintenance, exercising jurisdiction vested with the learned Sessions Judge, has committed a grave error of law as well as of fact. I have been taken through the relevant para 12 of the maintenance application filed by present petitioners, wherein, it is specifically contended that considering the status of the applicants and the income of respondent No.2 husband/father, they are entitled to maintenance of Rs.4000/- per month for each applicant, i.e. Rs.8000/per month. But, as the Court would not confer jurisdiction, award of an amount anything more than Rs.5000/- per month because of the limitation prescribed by the scheme prevailing at the relevant point of time, the claimant had voluntarily restricted the claim of maintenance to Rs.5000/- per month for each applicant. But, here the matter was pending before the learned Magistrate. Section 125 CR.P.C. came to be amended w.e.f. 24.9.2001. The learned Magistrate granted maintenance of Rs.2500/- to the applicant No.1 wife Rekhaben. As the applicant No.2 Son has crossed the age of 18 years and certain arrangement was worked out for further study of on Mahesh, no maintenance to son Mahesh was granted.

3. The petitioner wife was rightly granted maintenance of Rs.2500/- in light of the other responsibilities and one fact that a young daughter is being maintained by respondent No.2 husband.

4. The learned Sessions Judge, while dealing with the Revision Application filed by the respondent No.2husband has committed grave error in recording the scheme of Section 125 Cr.P.C. The function of the legislature to see that the same shall have only prospective effect nor there is an embargo that the deletion of the figure 500/- would not be applicable to the pending application of maintenance filed under Section 125 of Cr.P.C. So, date on which the application was finally heard, the learned Magistrate has rightly considered the averments made in relevant para 12 of the maintenance application and the existing provision of Section 125 of Cr.P.C. on the date of decision. Learned Judge has also committed error in observing that special opportunity of being heard ought to have been given to the husband if the Court was inclined to grant maintenance above the amount of Rs.500/- prayed in the last clause of the application.

5. It is true that proceedings under Section 125 Cr.P.C. are not absolutely a criminal proceedings and the Courts in more than one decision have said that these proceedings are quasi civil and quasi criminal proceedings. So, there is an element of civil proceedings where a Magistrate is asked to adjudicate the amount of maintenance, but, it is also an accepted proposition of law that though the proceeding has an element of civil proceedings, the law of pleadings would not be applicable in such proceedings. So, formal amendment in the relief clause was not at all legally warranted or required. It is always open for the learned Magistrate to grant adequate amount of maintenance in light of various facts and circumstances, i.e. income of a person under legal obligation to pay maintenance, status of the family, other liabilities, if any, of such person and the socioeconomic back ground of both the families, i.e. family of the person under obligation and the family of the applicant who has approached the Court for maintenance. For the sake of brevity and convenience, It would be proper to quote relevant part of Clause (d) of sub Section 1 of Section 125 Cr.P.C.; which reads as under:

"(d) his father or mother, unable to maintain himself or herself, a Magistrate of the first

class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate, as such magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct:"

After omission of the words "not exceeding Rs.500/- in the whole", the jurisdiction can be said to have been automatically conferred which may be termed as obligation on the part of the Magistrate to grant "maintenance at such monthly rate as such Magistrate thinks fit."

6. So, if the petitioner, even has not mentioned any amount in the application for maintenance that he may be awarded a particular amount, the amount is supposed to be determined by the learned Magistrate and to pass an enforceable order so that the amount so determined can be reflected by enforcing that order under sub Section 3 of Section 125 Cr.P.C. It seems that the learned Sessions Judge while dealing with the revision application has ignored the entire scheme which was readily available on the statute. So, the say of Mr. Mukesh A Patel shall have to be accepted that this is a grave jurisdictional error and error of law both. It may be legitimately argued that this is a failure of exercising jurisdiction vested in the Court. The indirect effect of the decision is nothing but a miscarriage of justice and incorrect interpretation of the existing scheme provided by the statute.

7. Learned APP Mr. Pandya has fairly submitted that the amount of maintenance on merit could have been reduced to Rs.500/ but, the learned Sessions Judge has not reduced the amount on merit or facts, available on record. On the contrary record shows that substantial amount has been parted and deposited with a bank by him for his Son, i.e. amount of more than Rs.2 lakhs. Undisputedly, he was earning more than Rs.11000/- per month on the relevant date on which the initial order of maintenance was passed by the learned Magistrate. So, the amount of Rs.2500/- in hard days today cannot be said to be an excessive amount, so there was no reason for the learned Sessions Judge to reduce the amount granted by the learned Magistrate. Revision, therefore, succeeds. The petitioner wife is hereby granted maintenance of Rs.2500/- per month from the date of application, i.e. day on which the application under Section 125 was presented in the Court of learned JMFC, Savarkundala,

District Amreli. Respondent No.2 husband is directed to pay the amount of arrears in six equal monthly installments. So, now he shall have to pay Rs.2500/plus first instalment of the total arrears. The Court does not want to enter into the mathematics as to what would be the exact amount of the first instalment required to be paid to the wife, as the respondent No.2 is a Teacher and competent to calculate the amount payable to the wife. It is directed that the amount of maintenance be paid regularly within first 10 days of a English calendar month. Rule is made absolute in above terms.

(C.K.Buch,J)

Jayanti*